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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,313	12/17/2001	Aziz Rassi Neto	P-6	4997

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EXAMINER

DAVIS, DANIEL J

ART UNIT PAPER NUMBER

3731

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/022,313

Applicant(s)

NETO, AZIZ RASSI

Examiner

D. Jacob Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/27/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “radial indenture” must be shown or the feature(s) canceled from the claim(s). Figures 1 and 2 illustrate the slots 9, but the slots do not appear to be radial. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 7 are rejected under 35 U.S.C. 102(e) as being U.S. Patent No. ~~6,436,124~~ <sup>6,436,142</sup>

to Paes et al. In figure 1, Paes discloses a surgical screw comprising an expandable element 26 formed by a monoblock comprising a bore having threads 40. The monoblock further comprises external threads along its length and slots 42 and 44. Column 6, lines 60-65 disclose that the bore may be tapered. The device has a “proximal end” 36 and a “distal end” 38. The “distal” most internal thread 40 may comprise a radial indenture, capable of receiving a tool. The screw further comprises a spindle 28 having a head in the form of a cavity 58. The distal end 38 comprises a trunk configuration. “Extremely close threads” is a relative statement. Relative to an auger, for example, the threads are extremely close.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(c) which forms the basis for all obviousness rejections set forth in this Office action:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-8 are rejected under 35 U.S.C. 103(c) as being unpatentable over U.S. Patent No. 2,381,050 to Hardinge in view of U.S. Patent No. 3,036,142 to Paes et al. Hardinge discloses a screw as illustrated in figures 5 and 6 comprising a monoblock body 6. The body comprises a funneling bore. The embodiment of figure 6 fails to disclose external threads along the entire length of the expandable member. Nevertheless, figure 2 and the first paragraph of page 2 disclose threads along the entire length of the expandable member. Hardinge fails to disclose that the entire length of the interior bore is threaded. Nevertheless, Paes teaches a bore that is threaded interiorly along its entire length. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include internal and external threads extending along the entire length of the monoblock 6. The internal threads would more effectively retain the spindle 26 and the external threads would more effectively retain the monoblock 6.

(It is noted that Applicant does not explicitly disclose any advantage for extending the threads along either the entire interior or exterior length of the monoblock member.)

The embodiment of figure 5 fails to disclose a radial indenture on the expandable element 6. Nevertheless, figure 3 teaches such a slot 23 to receive a tool. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify figure 5 to include a

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slot to receive a driving tool. The slot 23 is not a hexagonal cavity. Nevertheless, it is well known in the art to make a hexagonal cavity to receive a driver and would have been obvious to one of ordinary skill in the art at the time the invention was made to do so.

The distal end of the device comprises a trunk configuration. The slots extend generally approximately about one-half of the length of the expandable element.

Claim 6 is rejected under 35 U.S.C. 103(c) as being unpatentable over U.S. Patent No. 6,436,124 to Paes et al. Paes fails to disclose a hexagonal cavity. Nevertheless, it is well known in the art to make a tool receiving cavity hexagonal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cavity shape to be hexagonal.

### ***Response to Arguments***

Applicant's arguments, filed December 27, 2004, under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new grounds of rejection are made as outlined above.

Applicant contends that Hardinge does not disclose a generally cylindrical expanding element as recited in claim 1. Examiner respectfully maintains that it does as clearly viewed in figure 5.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (571) 272-4693. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD

  
GLENN K. DAWSON  
PRIMARY EXAMINER